

CLOQUET

PUBLIC SCHOOLS

Independent School District No. 94
Cloquet, Minnesota 55720
August 19, 2015



AUG 25 15 10:59AM

Central Administration
302 14th Street • 218-879-6721 • FAX-879-6724
Cloquet Senior High School
1000 18th Street • 218-879-3393 • FAX-879-6494
Cloquet Middle School
509 Carlton Avenue • 218-879-3328 • FAX-879-4175
Churchill Elementary School
515 Granite Street • 218-879-3308 • FAX-879-7034
Washington Elementary School
801 12th Street • 218-879-3369 • FAX-879-3360
Community Education
509 Carlton Avenue • 218-879-1261 • FAX-878-3013
Cloquet Area Alternative Education Programs
302 14th Street • 218-879-0115 • FAX -879-6941
<http://www.cloquet.k12.mn.us>

Schools and Libraries Program Correspondence Unit
Letter of Appeal
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

Dear Sir or Madam:

On August 3, 2015 we received notice from the Schools and Library Division that they denied our appeal to correct a ministerial error on E-Rate Form 471, application number 1044893 for funding year 2015. We seek review of your decision based on the following information:

1	Attachment A. This is a copy of the bill we used as support when we completed our form 471. Because this represents the second year of a multi year contract, we didn't bring our contract with us to file form 471, just our most current bill.
2	The E-Rate Coordinator who represents this part of the state (NE Minnesota) is brand new to this position, so she was not familiar with the contract we signed last year.
3	The error was discovered when the service provider went to bill USAC for the first month's service. They discovered that we only requested the non-discounted portion on our application. They contacted us and we immediately requested a change. We have attached the bill, and you can clearly see the bill does not show the gross amount anywhere (Attachment A).
4	<p>We filed an appeal and were denied. The stated reason for the denial was that we did not ask for the change until after funding had been committed.</p> <p>Is there any point in the program integrity assurance phase where a 70% reduction in cost from the prior year in a multi year contract would be investigated? In form 471 we are asked to identify the prior year FRN and to identify contracts signed in prior applications. I would think that this is one area that could easily be analyzed in every multi year application. (It would be relatively easy to program this analysis and outliers could be flagged) DA</p>
5	It would have been difficult to catch this error when reviewing the form 471 receipt acknowledgement letter because the invoice only shows the NON-DISCOUNTED portion. Both our district and the regional e-rate coordinator never saw the gross amount on the invoice.
6	Attachment B. In a FCC order DA 10-2354, released December 16, 2010 an appeal was granted on a ministerial error that involved "entering the discounted annual price rather than the pre-discount annual price". See highlighted area in the order.

Below is the information on denied funding request that we are seeking further review on.
Please let me know if you need additional information or if there is anything additional we can
do to facilitate this review.

Applicant Name:	Cloquet School District 94
Billed Entity Number:	133657
471 Application Number:	1044893 (for funding year 2015)
Funding Request Number:	2850418
SPIN Number:	143029836
Contact Name:	Yvette Maijala
Title:	Director of Technology
Address:	302 14 th Street Cloquet, MN 55720
Phone Number:	218-879-6721 ext. 6217
Email Address:	ymaijala@isd94.org

Original Funding Request	\$ 641.25 MONTHLY
Corrected Funding Request	\$2,375.00 MONTHLY
Discount %	70%

Thank you for your consideration.

Sincerely,



Yvette Maijala
Director of Technology

Enclosures:

- Attachment A – copy of monthly invoice used to complete form 471
- Attachment B – copy of FCC Order DA 10-2354
- Attachment C – copy of contract

Master Account Summary

Previous Balance \$1,282.50
 Dec 29 Payment - Thank You -641.25
Leaf Charges by Group

ENTERPRZ \$641.25

Jan 21 Cloquet School Dist #94 8383640430000466 641.25

Leaf Charge Total \$641.25

Total Due \$1,282.50

Leaf Details by Group

ENTERPRZ

CLOQUET SCHOOL DIST #94

509 CARLTON AVE

CLOQUET MIDDLE SCHOOL

CLOQUET, MN 55720-1757

Account Number: 8383640430000466

Monthly Charges

Date	Description	Quantity	Amount
Feb 01 - Feb 28	Dedicated Internet	641.25	

Subtotal \$641.25

Total for Account 8383640430000466 \$641.25

ENTERPRZ SUBTOTAL 1 Account(s) \$641.25

Total for Master Account: ENTERPRZ

Total Accounts 1 \$641.25

Attachment A.



Monthly bill does not
 show discounted
 portion.



MEDIACOM-ATTN:RICHARD LEWIS BTSC
3737 WESTOWN PARKWAY W DES MOINES, IA 50266
8822 4270 ZO RP 21 01222015 NNNNNYNN 01 000024 0001

CLOQUET SCHOOL DISTRICT *
302 14TH ST
ATTN YVETTE
CLOQUET, MN 55720-2102
|||

OK for D

January 21, 2015
Statement of Service

Account number
8383 64 030 0002055
Cloquet School District *

Contact us
Phone: 845-695-2655
Online at: EnterpriseBilling@mediacomcc.com

Summary See the back for details

Billed from 02/01/15 - 02/28/15

Previous balance	\$1,282.50
Payments received	-641.25
Unpaid balance	\$641.25
Leaf Charges	641.25

Upon Receipt \$1,282.50

Pin Number 7997

Attachment 14

Before the
Federal Communications Commission
Washington, DC 20554

Attachment B

In the Matter of)

Requests for Waiver and Review of Decisions)
of the Universal Service Administrator by)Ann Arbor Public Schools)
Ann Arbor, MI, *et al.*)File Nos. SLD-542873, *et al.*Schools and Libraries Universal Service)
Support Mechanism)

CC Docket No. 02-6

ORDER

Adopted: December 16, 2010

Released: December 16, 2010

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant 38 appeals of decisions of the Universal Service Administrative Company (USAC) from schools and libraries seeking to correct ministerial or clerical errors on their FCC Forms 470 and 471 and other related forms for funding under the E-rate program (formally known as the schools and libraries universal service support program).¹ As an initial matter, we find that five appellants warrant waivers of our appeal filing deadline because the appeals involved errors by USAC or an appeal was filed within 60 days of the appellant receiving actual notice.² Next, consistent with the Bureau's *Archer Public Library Order*³ and based on our review of the record, we find good cause exists to waive sections 54.504(b), 54.504(c), and 54.507(c), as necessary, of the Commission's rules to permit these petitioners to correct ministerial or clerical errors on their original FCC Forms 470 and 471 and other related forms or submissions to USAC.⁴

2. Specifically, we find that the petitioners inadvertently made ministerial or clerical errors while completing their FCC forms, while responding to USAC requests for additional information during

¹ In this order, we use the term "appeals" to refer generally to requests for review of decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). A list of the appeals is attached in the appendix.

² 47 C.F.R. § 54.720. We first find that Illinois School for the Visually Impaired, International College Preparatory Academy, and Nur-Ul-Islam Academy were seeking to correct errors made by USAC in processing their applications but were not aware of those errors until after the 60-day appeal deadline. We also find that Greater Albany Public Schools and Holcomb Unified School District 363 filed their respective appeals within 60 days of discovering or receiving notice of the defects in their applications.

³ *Request for Review of the Decision of the Universal Service Administrator by Archer Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-140961, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518 (2008) (*Archer Order*) (granting waivers permitting petitioners to correct clerical or ministerial errors in their FCC Forms 471 or associated item 21 attachments).

⁴ See appendix; 47 C.F.R. §§ 54.504(b), 54.504(c), 54.507(c).

the application review process, or while making requests for service substitution.⁵ These errors include: failing to timely notify USAC to correct a USAC clerical error,⁶ entering the wrong FCC Form 470 number, wrong billed entity number, or wrong billed entity number/worksheet number on their FCC Form 471;⁷ entering the wrong name or service provider identification number (SPIN);⁸ entering the wrong expiration date for a contract;⁹ erroneously characterizing the purchase and installation of equipment as a recurring service;¹⁰ making a calculation error;¹¹ entering the monthly charge as the annual charge;¹² entering the discounted annual price rather than the pre-discount annual price;¹³ entering the amount that a service provider was mistakenly temporarily charging rather than the contracted monthly rate;¹⁴ miscalculating its discount rate;¹⁵ failing to separately list a building where equipment was to be located;¹⁶ failing to enter a request for telecommunications service that was clearly indicated on its item 21 attachment;¹⁷ basing its block 5 funding requests on the wrong FCC Form 471 block 4 worksheet;¹⁸ selecting the wrong term or service;¹⁹ selecting the wrong category of service in its FCC Form 471;²⁰ making a typographical error in recording the cost of ineligible equipment in response to a USAC request for additional data;²¹ failing to follow the correct procedure for modifying its FCC Form

⁵ Ministerial and clerical errors are those that would, for example, be made when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetical error.

⁶ Illinois School for the Visually Impaired (misplaced decimal point), International College Preparatory Academy (treating a monthly bill as an annual total), Nur-UI-Islam Academy (treating a monthly bill as an annual total) (concerning application 585505).

⁷ Clare-Gladwin RESD, Roosevelt School District No. 66, Santa Clara County Office of Education, Shasta Union High School District, Wallace School District 65-R, Winchester Public Schools, York County School District 1.

⁸ Burlington County Special Services District, New Kent County Public Schools (gave wrong name of service provider).

⁹ Ann Arbor Public Schools.

¹⁰ Cartwright School District, Centralia School District, Cocke County Schools, Community School for Apprenticeship Learning, Harmony Area School District, Long Beach Unified School District.

¹¹ Okmulgee Independent School District 1.

¹² Oklahoma City Public Schools.

¹³ South O'Brien Community School District.

¹⁴ Avery County School District.

¹⁵ Rio Dell Elementary School District.

¹⁶ Garvey School District, Taos Municipal Schools.

¹⁷ St. John the Apostle School (concerning application 752047).

¹⁸ San Bernardino City Unified School District.

¹⁹ Nur-UI-Islam Academy (concerning application 564645), Rio Grande City Consolidated Independent School District.

²⁰ Miami-Dade County Public Schools, Holcomb Unified School District 363.

²¹ Rosemead Elementary School District (the cost of ineligible equipment, the amount of which was to be subtracted from a total purchase, was mistakenly recorded during PIA review as \$44,543.25 x 2, instead of \$4,543.25 x 2).

471;²² mistakenly providing the wrong documentation concerning a purchase;²³ and describing the service it purchased as for its entire district when it was only intended to serve a single elementary school.²⁴ In addition, one applicant omitted a service from a service substitution request,²⁵ and another entered the wrong application number on the certifications it submitted and apparently failed to press the submit button to submit its otherwise completed application.²⁶

3. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.²⁷

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for review filed by the petitioners listed in the appendix ARE GRANTED and their applications ARE REMANDED to USAC for further consideration to the extent provided herein.

5. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that sections 54.504(b), 54.504(c), and 54.507(c) of the Commission's rules, 47 C.F.R. §§ 54.504(b), 54.504(c), and 54.507(c) ARE WAIVED for the petitioners listed in the appendix as provided herein, and that section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED for the petitioners listed in footnote 2.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that USAC SHALL COMPLETE its review of each remanded application listed in the appendix and ISSUE an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²² Baxley Wilderness Institute.

²³ Yupiit School District.

²⁴ Liberty Public Schools.

²⁵ Chico Unified School District (substitution request inadvertently omitted a service whose cost was included in the submitted total).

²⁶ Iredell-Statesville Schools.

²⁷ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

APPENDIX

Applicant/Service Provider Name	Application Number	Funding Year	Date Filed
Ann Arbor Public Schools Ann Arbor, MI	542873	2007	Oct. 26, 2007
Avery County School District Newland, NC	686081	2009	Jul. 2, 2009
Baxley Wilderness Institute Baxley, GA	577689	2007	May 27, 2008
Burlington County Special Services District Mount Holly, NJ	671143	2009	Feb. 3, 2010
Darcomm Network Solutions (Cartwright School District) Phoenix, AZ	408211	2004	Feb. 28, 2007
Centralia School District Centralia, WA	616328, 616414	2008	Oct. 14, 2009
Quest (Chico Unified School District) Sacramento, CA	414517	2005	Nov. 3, 2006
Clare-Gladwin RESD Clare, MI	650762	2009	July 30, 2009
Cocke County Schools Newport, TN	684282, 684298	2009	Oct. 19, 2010
Community School for Apprenticeship Learning Baton Rouge, LA	405952	2004	July 24, 2007
Garvey School District Rosemead, CA	632417	2008	Sept. 2, 2009
Harmony Area School District Westover, PA	471000	2005	Aug. 18, 2008
Holcomb Unified School District 363 Holcomb, KS	724354	2010	Nov. 4, 2010
Illinois School for the Visually Impaired Jacksonville, IL	619896	2008	Oct. 23, 2008
International College Preparatory Academy Cincinnati, OH	447722	2005	Nov. 8, 2006
Iredell-Statesville Schools Statesville, NC	729572	2010	Sept. 21, 2010
Liberty Public Schools Liberty, MO	518119	2006	Jan. 22, 2007
Cybertek Computer and Networking Services (Long Beach Unified School District) Long Beach, CA	680511	2009	July 30, 2010
Miami-Dade County Public Schools Miami, FL	448782	2005	May 17, 2006
New Kent County Public Schools New Kent, VA	376935	2009	Jan. 3, 2010
Nur-Ul-Islam Academy Cooper City, FL	585505	2007	Apr. 15, 2008



Attachment C

DEDICATED INTERNET ACCESS (DIA) FIBER AGREEMENT

This Dedicated Internet Access (DIA) Fiber Agreement (the "Agreement") is entered into by and between MCC Telephony LLC 1 Mediacom Way, Mediacom Park, NY, 10918 ("Mediacom") and Cloquet School District 509 Carlton Avenue, Cloquet, MN 55720 ("Customer"). SERVICES: Pursuant to the terms of the Agreement and subject to the terms of the Fiber Internet Access Agreement General Terms (attached as Exhibit A to the Agreement) (the "General Terms") and of the Business Acceptable Use Policy (which can be viewed on Mediacom's website at <http://www.mediacomtoday.com/baup>) (the "BAUP"), Mediacom agrees to provide, and Customer agrees to purchase, for the Service Term specified below, access to the Internet via Mediacom's fiber optic network, and certain ancillary services directly related thereto, including the provision of 0 Static IP address(es) (the "Services"), which access will be available at and through a specified point of interconnection (the "Demarcation Point") between Mediacom's facilities and networks (collectively, the "Mediacom Network") and certain Mediacom equipment to be installed at a specified physical location at the Customer's designated service location (such physical location, the "Termination Location", and such service location, the "Service Location").

SERVICE LOCATION: Cloquet Middle School 509 Carlton Avenue, Cloquet, MN 55720

TERMINATION LOCATION: 1st Floor Server Room

DEMARCATON POINT: Mediacom's equipment at the Termination Location.

BANDWIDTH: 200 Mbps Fiber Internet

FEES AND CHARGES: Customer agrees to pay the following fees and charges (collectively, the "Fees") for the Services:

Installation Fee:	\$0.00
Monthly Service Fee:	\$2,375.00

The Installation Fee is payable upon Customer's execution of this Agreement. Monthly Service Fees (including any pro-rated amounts thereof), as may be adjusted pursuant to the General Terms, are payable upon receipt of, and pursuant to the terms of, the applicable invoice. Billing of Monthly Service Fee invoices will commence when Mediacom determines that it has established connectivity between the Mediacom Network and the Demarcation Point (the "Turn-Up Date").

SERVICE TERM: Unless earlier terminated pursuant to Section 6 of the General Terms, the initial term of the Agreement shall commence on the Effective Date and end 36 months following the Turn-Up Date (the "Initial Term"). The Agreement will automatically renew for successive one (1) month terms (each, a "Successive Term"), and all such Successive Terms and the Initial Term collectively, the "Service Term") upon the expiration of the Initial Term or any Successive Term, unless earlier terminated or either party notifies the other in writing at least 30 days prior to the end of the then-current term that it does not wish to renew.

ESTIMATED AVAILABILITY DATE: Mediacom estimates it will first make the Services available to the Customer 100 days following the date on which Mediacom executes this Agreement (the "Estimated Availability Date") or July 1, 2014.

By its signature below, each party acknowledges that it has read the Agreement, and the General Terms and BAUP, each of which is expressly incorporated by reference into the Agreement, and agrees to be bound by the terms thereof, effective as of 3/12/2014 (the "Effective Date") with services and billing to begin on July 1, 2014.

MCC Telephony LLC

Cloquet School District

Kim Josephson

Full Legal Account Name

Signature: Daniel P. Templin
Daniel P. Templin (Mar 14, 2014)

Title: Senior Vice President, Mediacom Business

Signer's Email: dtemplin@mediacomcc.com

Notice Address: Mediacom Business Services

1 Mediacom Way,

Mediacom Park, NY, 10918

Attention: Nancy Tom

Telephone: (845) 443-2600

Fax: (845) 698-4103

Signature: Kim Josephson
Kim Josephson (Mar 14, 2014)

Title: Business Manager

Signer's Email: ymaijala@cloquet.k12.mn.us

Notice Address: 302 14th Street

City, State Zip Cloquet, MN 55720

Attention: Yvette Maijala

Telephone: 218-878-3000

Fax: 218-879-6724

(11/10) Contract #: «opportunity_Record_Number»

Fiber Internet Access Agreement — General Terms

Unless the context otherwise requires, any reference herein to the "Agreement" shall be deemed to include these General Terms and the BAUP.

1. **Provision of the Services.** (a) Subject to the terms of the Agreement and subject to the performance by Customer of its responsibilities thereunder, Mediacom shall provide to Customer during the Service Term those Services described in the Agreement, and Mediacom's responsibilities are expressly limited to the provision of such Services.

(b) Mediacom's responsibility to provide the Services ends at the Demarcation Point. Customer will be responsible for all use and compatibility issues relating to the Services beyond the Demarcation Point.

(c) If Mediacom becomes aware that the Turn-Up Date will be delayed beyond the Estimated Availability Date, Mediacom shall notify Customer of the new Estimated Availability Date. The failure of the Turn-Up Date to occur by any Estimated Availability Date, or at all, shall not be a breach of the Agreement. If, for any reason other than the acts or omissions of Customer, the Turn-Up Date does not occur within one hundred (100) days after the date on which Mediacom executes the Agreement, Customer's sole right and remedy shall be to terminate the Agreement by written notice to Mediacom given not later than five (5) business days after the expiration of such one hundred (100) day period, upon receipt of which notice Mediacom will refund the Installation Fee to Customer.

(d) In providing and performing the Services, Mediacom shall use commercially reasonable efforts to observe the normal standards of performance within the telecommunications industry in the relevant market.

2. **Fees and Charges.** (a) All Fees will be billed via invoice and payment of such Fees will be due in advance, prior to the provision of the applicable Services. Customer agrees to pay Mediacom all Fees by the due date specified in the applicable invoice, without offset or reduction. In addition, Customer promises to pay, or reimburse Mediacom for its payment of, any applicable federal, state and local taxes, copyright fees, FCC fees, franchise fees or pass-throughs and other governmental charges or pass-throughs from time to time levied upon or in connection with the Services or otherwise related to the performance of the Agreement, any and all of which may be added to invoices rendered under the Agreement.

(b) During any Successive Term, the Fees are subject to adjustment and increase, at the sole discretion of Mediacom, upon thirty (30) days prior written notice to Customer.

(c) In the event that Customer fails to pay any Fees invoiced by Mediacom (i) within thirty (30) days following the due date specified in the applicable invoice, such unpaid Fees shall bear interest at an amount equal to the lesser of (x) 6% per annum and (y) the maximum amount permitted by law, and (ii) within sixty (60) days following the due date specified in the applicable invoice, Mediacom shall have the right to suspend performance of the Services. Mediacom will use reasonable efforts to provide Customer with notice of its intent to suspend the Services, provided, however, no failure of Mediacom to provide such notice will be deemed a bar to suspension or a breach of the Agreement by Mediacom. Customer shall also reimburse Mediacom for all expenses (including reasonable attorney's fees) incurred by Mediacom in collecting past due amounts.

3. **Tariffed Services.** Provision of the Services may be subject to tariffs filed with certain state regulatory agencies having jurisdiction over the Services or the Federal Communications Commission ("**Tariffed Services**"). Tariffed Services shall be provided in accordance with the provisions of any applicable tariff, which provisions are incorporated herein by reference. In the event that the Fees, rates, terms and conditions set forth in the Agreement applicable to any Tariffed Service conflict at

any time with those set forth in the applicable tariff, the rates, terms and conditions of the applicable tariff shall control. Mediacom shall notify Customer in writing in a timely manner of the conversion, at Mediacom's discretion and in Mediacom's sole judgment, of an untariffed Service to a Tariffed Service or of the modification of the terms of an applicable tariff.

4. **Equipment; the Service Location.** (a) Mediacom will be responsible for the installation of all equipment and materials required, in Mediacom's sole opinion, to provide the Services (collectively, the "**Equipment**"). Mediacom may modify, replace or remove any Equipment at any time during the Service Term. All Equipment will remain the sole property of, and all title thereto will remain with, Mediacom.

(b) Customer agrees to provide adequate secured space in the Service Location for the Equipment and adequate electrical power, climate control and protection against fire, theft, vandalism and casualty. Customer will insure that (i) non-Mediacom-supplied wiring, equipment and other items in the Service Location are adequate, compatible and safe for use with the Equipment, and (ii) the Equipment is not moved or tampered with by any person not authorized by Mediacom to do so. If any of the Equipment is destroyed, stolen or damaged in any way, Customer will pay Mediacom an amount equal to the value of the required repairs, if damaged, or the value of the applicable Equipment, if destroyed or stolen.

(c) Customer will provide Mediacom all necessary or desirable access at all reasonable times to the Service Location, and will provide reasonable access to the Service Location to allow Mediacom to remove the Equipment within sixty (60) days after termination of the Agreement.

(d) Customer will obtain all rights-of-entry, rights-of-way, easements, licenses, approvals, consents, authorizations, and permits necessary (i) to permit Mediacom access to the Service Location, (ii) to allow the provision of the Services and/or (iii) to allow installation of the Equipment and establishment of the Demarcation Point, in each case pursuant to reasonably satisfactory and acceptable arrangements with the Customer, or the agency, authority, entity or other person having control or jurisdiction over or owning, the applicable property (collectively, "**Permits**"), when such Permits (x) relate to property owned, leased or controlled by Customer or (y) are reasonably requested by Mediacom to be obtained by Customer ("**Requested Permits**"). With respect to Requested Permits, Customer acknowledges that (i) the applicable Mediacom request may come as a result of Customer's superior, or more appropriate, relationship with the entity potentially granting the Requested Permit and (ii) such requests are reasonable. Upon request by Mediacom, Customer will provide copies of all such Permits to Mediacom as soon as reasonably practicable. If the costs of construction, installation of Equipment or, when applicable, repair to or restoration of any property disturbed or damaged by such construction or installation are in excess of those customary and reasonable for similar work because of peculiar or unexpected site conditions or requirements of Customer or any controlling agency, authority or other person, Customer will reimburse Mediacom for such excess costs.

(e) Mediacom's representatives shall have the right to inspect the Service Location prior to the installation of the Equipment. From the date of execution of the Agreement until Mediacom retrieves all Equipment pursuant to Section 4(c), Customer shall provide Mediacom, upon request, with sufficient data to assist Mediacom in evaluating conditions at the Service Location (including the presence of hazardous materials). Customer is responsible for removing and disposing of hazardous materials, including asbestos, prior to the installation of the Equipment.

5. **Customer Cooperation.** Customer shall cooperate, and cause its agents, representatives, contractors, suppliers, landlords and licensors to cooperate, expeditiously and in good faith with Mediacom to enable the Services to be provided, the Equipment be installed and the Demarcation Point be established without delay.

6. **Termination.** (a) Either party may terminate the Agreement upon thirty (30) days written notice to the other party if such other party materially breaches or violates any term or provision of the Agreement.

(b) In addition to its termination rights under any other provision of the Agreement, Mediacom may immediately terminate the Agreement without any liability if:

- (i) all or any significant portion of the Mediacom Network is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain,
- (ii) Mediacom determines in good faith that Customer's use of the Services is interfering unreasonably with the operation of the Mediacom Network,
- (iii) Mediacom determines in good faith that the condition of the Service Location or the Termination Location has become insecure, hazardous or otherwise unsuitable for storage of the Equipment or provision of the Services;
- (iv) Mediacom sells, disposes of, or otherwise transfers, in one or a series of transactions, substantially all the assets used to provide the Services to Customer, or
- (v) Mediacom determines that the capacity or connectivity on the Mediacom Network provided for in the Agreement is, or is likely to become, needed for another purpose or detrimental to the provision of services provided to other Mediacom customers by any Mediacom system or network.

(c) At any time when Mediacom is entitled to terminate the Agreement under Section 6(b), then Mediacom may, at its sole discretion and without prior notice, suspend the provision of any and/or all Services without liability on the part of Mediacom or any requirement to allow any credit for an Unscheduled Interruption and without prejudice to Mediacom's discretion to subsequently exercise the applicable termination right.

(d) Mediacom will use commercially reasonable efforts to provide Customer with notice of any such termination or suspension within a reasonable amount of time, provided however that the timing of such notice will not affect the timing of such termination.

7. **Effects of Termination.** Upon the termination of the Agreement, all rights and obligations of each party under the Agreement (including Mediacom's obligation to provide any Services) shall immediately cease, except that:

- (i) any rights or remedies arising out of a breach or violation of any terms of the Agreement, whether known or unknown, shall survive any expiration or termination of the Agreement for the applicable statute of limitations period or, if shorter, the period specified herein, subject to any applicable limitation or exclusion or rights or remedies or liability contained in the Agreement;
- (ii) the provisions of the Agreement which state that they survive or which, by their nature, reasonably would be expected to be intended to survive expiration or termination (including any provisions relating to payment of Fees, disclaimers, limitations or exclusions of warranties and liability, confidentiality or indemnification) shall survive indefinitely; and
- (iii) Mediacom may immediately invoice Customer for all accrued Fees, and Customer shall pay the invoiced amount immediately upon receipt of such invoice.

8. **Service Interruptions.** (a) Mediacom will use commercially reasonable efforts in keeping with industry standards to ensure that the Services are available to Customer twenty four (24) hours a day, seven (7) days a week. Customer acknowledges and agrees, however, that availability of the Services may be interrupted from time to time, including during periods of routine maintenance of the Mediacom Network or the Equipment (each such interruption, a "**Scheduled Interruption**"), and that no Scheduled Interruption, regardless of cause or reason, shall constitute a breach of the Agreement or a failure by Mediacom to perform its obligations under the Agreement or result in any right or remedy on the part of Customer other than the right to receive credits as provided in this Section 8. Mediacom will use commercially reasonable efforts to provide Customer with advance notice of any known or anticipated Scheduled Interruption.

(b) In the event of a complete loss of the Services which (i) is not a Scheduled Interruption, (ii) lasts more than four (4) consecutive hours, (iii) is not caused by Customer or any third party not under the control of Mediacom, (iv) does not occur as result of equipment or connections that Mediacom does not provide, (v) is not the result of a fiber cut or a Force Majeure Event (as defined below) and (vi) is reported to Mediacom within twenty four (24) hours after the commencement of such interruption (each such interruption, an "**Unscheduled Interruption**"), Customer will be entitled, for each Unscheduled Interruption, to request a billing credit, to be applied to the next monthly invoice issued to Customer, equal to the applicable pro-rata portion of the Monthly Service Fee affected by the Unscheduled Interruption, as calculated by Mediacom, against the following month's Monthly Service Fees (each credit, a "**Service Credit**"). No Service Credit or other credit will be provided for any scheduled interruption. Service Credits shall be customer's sole and exclusive right and remedy for Mediacom's failure to provide the Services.

(c) Service credits for Unscheduled Interruptions shall be calculated as follows: the Monthly Service Fee divided by 30 days (average days in one month) equals the average daily rate, which is then divided by 24 hours in one day to arrive at the Average Service Hour Rate.

(d) Mediacom shall monitor the Services twenty-four (24) hours a day, seven (7) days a week. Mediacom shall provide Customer with a toll free telephone number the Customer may call to report Unscheduled Interruptions. If necessary, in Mediacom's sole opinion, Mediacom will conduct an on-site investigation of the Equipment, Service Location, Termination Location or any Service Interruption and will use commercially reasonable efforts to remedy any disruption in the Services.

9. **Conditions to Mediacom's Obligations.** Any obligation of Mediacom under the Agreement, including any obligation to provide any Service, is subject to:

- (i) the due and punctual performance and satisfaction by Customer of each of its covenants, agreements, obligations, commitments and responsibilities; and
- (ii) the receipt and continuation in effect throughout the Service Term of all Permits.

In the event any Permit is not granted or is not continued during the Term, the parties shall negotiate promptly and in good faith such revisions to the Agreement as may reasonably be required to obtain such Permit, but if they are unable to agree within sixty (60) days after such negotiations begin, either party may terminate the Agreement by written notice to the other. In the event of any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award or other legal action that makes the performance of the Agreement illegal, requires any additional Permit or otherwise materially affects either party's performance or significantly increases its costs of performance, either party may, by providing written notice to the other party, require that the affected provisions of the Agreement be renegotiated in good faith, but if the parties are unable to agree within sixty (60) days after such negotiations begin, the affected party may terminate the Agreement by written notice to the other party.

10. Disclaimer of Warranties. The Services are provided at the Customer's sole risk on an "as is" and "as available" basis, with no guarantee concerning performance or any other aspect of the Services. Mediacom has not made, and in rendering Services, neither Mediacom nor any of its affiliates or subcontractors shall be deemed to make, any representation or warranty of any nature whatsoever, whether express, implied, statutory or other, and Mediacom expressly disclaims all such representations or warranties, including any implied warranty of merchantability, fitness for a particular purpose, title or non-infringement, that the Services will operate in an uninterrupted fashion, that any communication, data or file sent by or sought to be accessed by Customer or any user will be transmitted or received successfully, at any particular speed, within any period of time, without interruption or in uncorrupted form, or resulting from course of dealing or course of performance. Specifically, Mediacom makes no representation that the Services will be compatible with any of Customer's networks, systems, facilities or equipment. No oral or written specification, advice, service description, quality characterization or other information or statement given or made outside of the Agreement by Mediacom or any of its affiliates, employees, agents, subcontractors, licensors or suppliers shall create a representation or warranty or expand or otherwise affect the express warranties, if any, set forth herein.

11. Bandwidth. Mediacom will use commercially reasonable efforts, and reasonably expects, to provide the Services at the bandwidth noted in the Agreement. Customer acknowledges that upon connection to the internet, actual performance speed is dependent upon a number of factors, some of which are out of the control of Mediacom. Mediacom is not responsible for the effect of such factors on actual performance speed.

12. Limitations on Liability. (a) Customer acknowledges and agrees that all obligations and liabilities of Mediacom pursuant to or arising out of the Agreement, including the Services, are solely obligations of Mediacom as a limited liability company.

(b) Customer covenants and agrees that Mediacom, each of Mediacom's affiliates, contractors, subcontractor, licensors and suppliers, each partner, stockholder, member director, officer, employee, agent or representative of any of the foregoing and each successor and assignee of the any of the foregoing (the "**Mediacom Parties**") shall not have any liability (whether direct or indirect, in contract or tort or otherwise) to Customer or any other person for any damages, losses, liabilities, fines, penalties, settlement payments, indemnification and contribution payments, costs and expenses, including attorneys' fees and disbursements and costs and expenses of investigation, defense and settlement of any claim or appeal of decisions or judgments rendered therein or with respect thereto ("**Losses**") arising out of or in connection with the Agreement, except for such liability for such Losses directly caused by Mediacom's gross negligence or willful misconduct, which liability will be subject to the limitations set forth herein.

(c) Customer agrees that none of the Mediacom Parties shall be liable to Customer, or any other person for any indirect, incidental, consequential, reliance, special, exemplary or punitive damages or for any other damages (however denominated) for or based on or measured by harm to business, lost revenues, lost savings, loss of or on any investment, lost profits, loss of opportunity, loss of use, loss of data, loss of goodwill, costs of replacement goods or services, property damage, losses or liabilities that are a consequence of destruction or alteration of data, introduction of viruses, hacking, cracking or breaches of security, claims of users or other indirect or consequential loss, harm or damages arising out of or in connection with the Agreement.

(d) The aggregate liability of all Mediacom Parties with respect to the subject matter of the Agreement shall not exceed an amount equal to twice the Monthly Service Fee.

(e) Customer agrees that regardless of any statute or other law to the contrary, Customer must file any claim or cause of action arising out of or related to the Agreement or the Services (except with respect to billing disputes which are subject to the shorter time limitation set forth

elsewhere in the Agreement) within one (1) year after such claim or cause of action arose, or such claim or cause of action shall be forever barred. Except as otherwise stated in the Agreement, any claim of any nature against Mediacom shall be deemed conclusively to have been waived unless presented in writing to Mediacom within thirty (30) days after the date of the occurrence that gave rise to the claim.

(f) Each of the disclaimers and exclusions of and limitations on liability or damages contained in the Agreement shall independently apply regardless of (i) the form of action (including any action in contract or based on warranty, negligence, tort, strict liability or statute), (ii) any claim or finding that any breach of or default under the Agreement was total or fundamental, (iii) the type of damages, (iv) any claim or finding with respect to the adequacy, failure, purpose or sufficiency of any remedy provided for under the Agreement and (v) whether a person was informed or aware of, or otherwise could have anticipated the possibility of, such damages or liability.

(g) Customer understands and irrevocably accepts the limitations on liability contained in this section, and Customer acknowledges and agrees that but for such provisions, Mediacom would not offer or provide the Services or would require Customer to pay additional Fees.

(h) Each of the foregoing limitations contained in this Section 13(i) will apply regardless of form of action, any claim that breach of this Agreement or Mediacom's obligations was total or fundamental, the type of damages or any finding with respect to the adequacy, sufficiency or nature of the remedies contained herein, (ii) will apply to the maximum extent permitted by law and (iii) will survive the unenforceability of any other provision contained herein purporting to exclude or limit damages or liability.

13. Indemnification. Customer agrees to indemnify, defend and hold harmless Mediacom from and against all Losses incurred by or awarded against Mediacom arising out of or in connection with (i) any breach by Customer of the terms of the Agreement or Customer's obligations, covenants, representations or warranties contained therein, (ii) the operation or conduct of Customer's business or (iii) Customer's use of the Services, in each case except as such Losses were caused by the gross negligence or willful misconduct of Mediacom. Customer's indemnification obligations will survive the expiration or termination of the Agreement.

14. [INTENTIONALLY LEFT BLANK]

15. Customer Use. Customer agrees not to resell or redistribute access to any of the Services or Equipment, or any part thereof, in any manner without the express prior written consent of Mediacom. Except with respect to actions taken for the limited purpose of accessing and using the Services, Customer agrees not to interfere with the use or operation of the Equipment or the Mediacom Network in any way.

16. Waivers. (a) To the fullest extent permitted by applicable law, Customer waives the application of all existing and future laws or provisions of any state constitution that otherwise would limit the enforceability or efficacy of (i) the disclaimers and exclusions of and limitations on liability or damages contained in the Agreement or (ii) Customer's indemnification obligations. If any of the disclaimers, exclusions or limitations or exclusions contained herein may not be enforced under applicable law of provisions of any state constitution, even though the express provisions hereof provide for it and the parties intend for it to be enforced, then in such jurisdiction the liability of the Mediacom Parties collectively and individually for any and all causes of action and claims shall be limited, on an aggregate and cumulative basis, to the smallest amount permitted by applicable law.

(b) The parties specifically waive any right to trial by jury in any court with respect to any contractual, tortious, or statutory claim, counterclaim, or cross-claim against the other arising out of or connected in any way to the Agreement, because the parties hereto, both of whom are represented by counsel, believe that the complex commercial and professional aspects

of their dealings with one another make a jury determination neither desirable nor appropriate.

(c) If Customer is a government or governmental subdivision, agency or authority or is otherwise entitled to sovereign immunity, Customer hereby waives to fullest extent permitted by applicable law, any immunity that it may have against claims, actions, suits or proceedings that directly or indirectly arises out of or relates to the Agreement, whether based on contract, tort or any other theory. Customer acknowledges that such waiver has constituted a material inducement for Mediacom to enter into the Agreement.

17. Business Acceptable Use Policy. At any time and at Mediacom's sole discretion, Mediacom may modify, delete or replace the BAUP, in part or in whole, and/or institute other policies and procedures relevant to the Service. Notice of such modifications, deletions or replacements, and such other policies and procedures, will be posted on Mediacom's website <http://www.mediacomtoday.com/baup> or, at Mediacom's discretion, via e-mail, postal mail or other permitted means of notification.

18. Force Majeure. Mediacom will not be liable for any loss, damage, delay or failure of performance resulting directly or indirectly from any cause, event or circumstance which is beyond our reasonable control, including without limitation acts of God, government restrictions or actions, war, terrorism, epidemics, insurrection, sabotage, adverse weather conditions or adverse labor conditions or actions. If any such event causes an increase in the time necessary for Mediacom's performance under the Agreement, Mediacom shall be entitled to an equitable extension of time for such performance equal to at least one (1) day for each day of delay resulting from such event.

19. Independent Contractors; No Agency or Intellectual Property Licenses. The parties are independent contractors. Neither the Agreement nor any course of dealing creates or shall create any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has or shall have the right, power or authority to act for or on behalf of or assume, create or incur any liability or any obligation of any kind, expressed or implied, binding upon the other party. Customer acknowledges that the Agreement is nonexclusive and that Mediacom may contract with others to provide services work of the same or similar type as provided to Customer under the Agreement. No license under patents or other intellectual property rights is granted by either party or shall be implied or arise by estoppel in connection with the subject matter of the Agreement.

20. Assignability. Customer may not assign or delegate the Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of Mediacom, which will not be unreasonably withheld. Mediacom may freely assign the Agreement and may contract with subcontractors for the performance of any maintenance, repair or other services contemplated by the Agreement, including unaffiliated contractors. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, legal representatives and permitted assigns.

21. Severability. If any provision of the Agreement or its application to any person or circumstance is held by a court with jurisdiction to be invalid or unenforceable, the remaining provisions, or the application of such provision to other persons or circumstances, shall remain in full force and effect. Such court may substitute therefore a suitable and equitable provision to carry out, so far as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision and, if such court shall not do so, the parties shall negotiate in good faith to agree upon such a provision. Any provision that is judicially unenforceable in any jurisdiction shall not be affected with respect to any other jurisdiction.

22. Governing Law. The Agreement shall be governed by the laws of the State in which the Service Location is located, without regard to or application of conflicts of law rules or principles.

23. Entire Agreement. The Agreement is the entire agreement between the parties pertaining to its subject matter, and all written or oral

agreements, representations, warranties or covenants, if any, previously existing between the parties with respect to such subject matter are canceled. No course of dealing or practice shall be used to interpret, supplement or alter in any manner the express written terms of the Agreement.

24. No Third Party Beneficiaries. No other person is a third party beneficiary of the Agreement. Customer shall not be a third party beneficiary of any contract, agreement or arrangement between Mediacom and any other party.

25. Amendments and Waivers; Counterparts. Any amendments of the Agreement must be in writing and signed by both parties. No failure or delay in exercising any power, right, or remedy will operate as a waiver. A waiver, to be effective, must be written and signed by the waiving party. The Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. In addition to any other lawful means of execution or delivery, the Agreement may be executed by facsimile signatures and delivered by the exchange of signature pages by means of telecopier transmission.

26. Remedies Are Cumulative. Unless otherwise expressly stated in the Agreement, all remedies available under or with respect to the Agreement are cumulative and in addition to all other remedies, if any, available at law or in equity. The exercise of any suspension or termination right granted a party in the Agreement shall not result in a breach of the Agreement by such party, and neither such exercise nor any consequence thereof (even if the exercising party was notified or otherwise aware that such consequence would or might result) shall give rise to any claim by or liability to the other party, whether in contract, tort or otherwise. The prevailing party in any litigation between the parties arising out of the Agreement shall be entitled to recover its legal expenses, including court costs and attorneys' fees.

27. Binding Agreement. Each party represents and warrants to the other that (i) such party has the authority to execute, deliver and carry out the terms of the Agreement, and (ii) the Agreement has been duly authorized, executed and delivered by, and constitutes a legal, valid and binding agreement of, such party.

28. Notices. Any notice required or permitted to be given under the Agreement shall be deemed to be given delivered in writing personally to Customer or Mediacom, sent by overnight courier, or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given at such party's notice address set forth below such party's signature to the Agreement or any other address designated by such party upon at least ten (10) days' prior written notice to the other party.

29. Confidential and Proprietary Information. All information, in whatever form obtained by Customer from Mediacom and the terms of the Agreement shall be held in confidence by Customer and shall not be used by Customer for any purpose other than the performance of the Agreement. Customer's confidentiality obligations will survive for a period of five (5) years after termination.

30. Mediacom's Discretion. If any provision of the Agreement states that Mediacom "may" take or refrain from taking any action or that any action requires the consent, approval or agreement of Mediacom or otherwise gives Mediacom any right, option, election or discretion that is not expressly limited, then the decision as to whether, when and how to take or refrain from taking such action, give or withhold such consent or approval or exercise or refrain from exercising such right, option, election or discretion shall be within the sole and absolute discretion of Mediacom.

31. Governmental Entity. (a) Mediacom acknowledges that, due to Customer's status as a governmental entity, Customer's ability to perform its payment obligations under the Agreement depends upon its receipt of certain federal, state, municipal or other governmental funding, as applicable ("Funding"). Customer agrees that it will use its commercially reasonable efforts to secure all necessary Funding to allow Customer to perform all such payment obligations. (b) Customer must provide written notice (the "Underfunding Notice") to Mediacom within three (3) business days after any discovery by Customer that, due to factors outside of the control of Customer, Customer will not receive adequate Funding, and has no additional available funds, to enable it to perform its payment obligations under the Agreement at any time during the remainder of the Term (such date of the provision of notice, the "Underfunding Notice Date"). The Underfunding Notice must (i) include a general description of the factors leading to the lack of adequate Funding and (ii) specify the date on which Customer reasonably expects it will become unable to perform its payment obligations under the Agreement (the "Projected Payment Failure Date"). Following the Underfunding Notice Date, either party may terminate the Agreement upon five (5) business days notice. Unless earlier terminated, the Agreement will automatically terminate on the Projected Failure Date unless (i) Mediacom and Customer have successfully renegotiated the terms of the Agreement, (ii) Customer has provided Mediacom with written notice that it has secured adequate Funding to enable it to perform its payment obligations under the Agreement for the remainder of the Term or (iii) Mediacom has provided Customer with written notice that it does not wish the Agreement to terminate.



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